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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Recommended Decision of)
Federal-State Joint Board)
on Universal Service)
)

CC Docket No. 96-45

TO: The Commission

COMMENTS OF BUSINESS SOFTWARE ALLIANCE

Respectfully submitted,

BUSINESS SOFTWARE ALLIANCE

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COMMENTS OF BUSINESS SOFTWARE ALLIANCE

The *Recommended Decision* by the Federal-State Joint Board on universal service gives the Commission and the states an historic opportunity to set the country on a path towards a communications network that will provide all Americans with *access* to the services and bandwidth they need to participate fully in the global information revolution without expanding the scope of regulation in a manner that would require all consumers to bear the costs of actually providing advanced services. The Business Software Alliance ("BSA"), which represents the leading software publishers, strongly supports the Joint Board's recommendation that schools and libraries receive affordable access to advanced services such as the Internet.^{1/} The Joint Board properly recognizes

^{1/} BSA promotes the continued growth of the computer software industry through its international enforcement, education, and public policy programs. On behalf of the companies producing PC and client server software, BSA operates public policy, education, and enforcement programs in 65 countries, including the U.S. BSA also participates in regulatory policy issues in the U.S. BSA's Policy Council consists of Adobe Systems, Inc.; Apple Computer, Inc.; Autodesk, Inc.; Bentley Systems, Inc.; Lotus Development Corporation; Microsoft Corporation; Novell, Inc.; The Santa Cruz

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that students should have the opportunity to learn new information technologies in school so that they will be prepared to achieve their greatest potential as future productive members of the work force. BSA applauds this affirmative act to promote deployment of high bandwidth technology, and urges the Commission to ensure that this policy is implemented in a manner that achieves the goal of competitive neutrality. BSA also endorses the recommended definition of telecommunications carrier, which is a narrow definition that does not cover Internet service providers and is consistent with congressional intent. Finally, BSA supports the Joint Board's definition of a "core" level of universal service and the use of a forward-looking cost methodology.

I. BSA STRONGLY SUPPORTS THE POLICY PROMOTING ACCESS FOR SCHOOLS TO THE INTERNET, AND URGES THE COMMISSION TO ADOPT COMPETITIVELY NEUTRAL RULES FOR IMPLEMENTING THAT POLICY.

A. The Joint Board Recommendation Fulfills the Congressional Mandate of the 1996 Act.

The Joint Board's recommendation to include in the definition of services eligible for universal service connections to the Internet fulfills the mandate of Congress in the Telecommunications Act of 1996 ("1996 Act") that telecommunications services should be used to "help open new worlds of knowledge, learning and education to all Americans -- rich and poor, rural and urban. . . . This universal access will assure that no

^{1/}(...continued)

Operation, Inc.; and Symantec Corporation; and other leading computer technology companies including Computer Associates International, Inc.; Digital Equipment Corp.; IBM Corp.; Intel Corp.; and Sybase, Inc.

one is barred from benefitting from the power of the Information Age."^{2/} The Joint Board's recommended decision is a measured, reasonable step to put our country on the path to a global information age. BSA strongly supports this affirmative act to promote the deployment of advanced telecommunications services.^{3/}

Connecting schools to the Internet and other on-line information service providers will give children the tools they need to learn and compete for future jobs.^{4/} This will only occur, however, if schools do their part by investing in equipment, training, and planning needed to make technology integrated into the curriculum. BSA therefore urges the Commission to adopt the recommendation that schools must have formulated a technology plan before they can receive a subsidy for access to advanced services. Such a plan must require schools to integrate advanced telecommunications services and technology with the primary mission of the schools, teaching the basic academic curriculum. Advanced telecommunications services and technology can be a catalyst for reinventing education, but they must be supported by adequate facilities, training, and planning. Without this support, expensive technology and services could become a mere sideshow that helps neither teachers nor students. With this support, technology could become as essential to a classroom as a blackboard.

^{2/} H.R. REPT. NO. 458 (Conference Report), 104th Cong., 2d Sess. 132-33 (1996).

^{3/} The Joint Board correctly decided to focus the subsidy on the conduit to such services, and not the content. The Commission should adopt this recommendation, since it is consistent with the 1996 Act, which did not embrace information services as eligible for universal service support, and it prevents the FCC from getting involved with intractable issues as to which content is "appropriate" for government subsidy.

^{4/} For ease of reference, these comments refer to "Internet" and "Internet providers" to include all on-line information service providers.

B. The Rules Implementing the Policy of Promoting Internet Access To Schools Must Meet The Requirement of Competitive Neutrality.

Section 254(h)(2) of the 1996 Act states that "[t]he Commission *shall establish competitively neutral rules* to enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms"^{5/} In fulfilling its statutory obligation, the Commission must review carefully the recommended decision of the Joint Board to ensure that it does not inadvertently violate the requirement of competitive neutrality. In addition to this statutory requirement, the Commission also should adhere to the Joint Board's recommendation that competitive neutrality be included in the principles guiding evaluation of a universal service plan. *See Recommended Decision* at ¶ 23. This principle will promote efficiency and is consonant with the goal of the 1996 Act -- to promote local telephone competition.

The Joint Board states that "internal connections, which may include such items as routers, hubs, network file servers, and wireless LANS" should be eligible for universal service support. *Id.* at ¶ 477. If the Commission finds it has the authority to adopt this recommendation, then the principle of competitive neutrality requires that the Commission ensure that carriers are not given a competitive advantage by being the only entities eligible for universal support in this area. The goal of competitive neutrality, as well as good public policy, dictates that all parties in a competitive bidding process should have the opportunity to compete fairly. Schools will be better served if there is

^{5/} 47 U.S.C. § 254(h)(2) (punctuation omitted) (emphasis added).

fair competition among competing companies, and the Commission's ultimate policy goal, to provide schools with affordable Internet access, will be advanced.

II. THE FCC SHOULD ADOPT THE RECOMMENDED DEFINITION OF CARRIERS OBLIGATED TO SUPPORT UNIVERSAL SERVICE AND THE DEFINITION OF UNIVERSAL SERVICE.

A. The Definition of Carriers Required to Contribute To Universal Service Should be Limited to Carriers Providing a Telecommunications Service.

BSA strongly supports the Joint Board's recommendation to the Commission that the definition of telecommunications carriers obligated to support universal service ("mandatory contributors") not include Internet service providers or other providers of information or enhanced services. This recommendation flows directly from Section 254 of the 1996 Act and the Commission's precedent, and should be adopted by the Commission.

Section 254(d) states that "[e]very telecommunications carrier that provides interstate telecommunications service shall contribute" to the support mechanisms created by the Commission to preserve and advance universal service. The 1996 Act defines "telecommunications carrier" as "any provider of telecommunications services."^{6/} Therefore, as the Joint Board reasoned, the key question in determining which persons are mandatory contributors to the universal service support mechanism is to identify the extent to which a party provides "telecommunications services."

^{6/} 47 U.S.C. § 153(44).

The Joint Board correctly begins its analysis of this question by looking to the Commission's precedents.^{7/} In the *Local Competition Order*, the Commission stated that information service providers are not providers of telecommunications services, and thus not "telecommunications carriers."^{8/} This decision stems from an application of the core elements of the term "telecommunications service," *see* 47 U.S.C. § 153(46), to the operations of on-line providers. The Telecommunications Act of 1996, § 153(46), defines "telecommunication service" as providing telecommunications (i.e., transmission of information) between or among points specified by the user, without change in form or content, directly to the public, for a fee. A detailed analysis of the operations of an Internet Service Provider ("ISP") reveals that users of on-line information and Internet services do not necessarily choose the pathways of the information they send, and most importantly, the content and form of the information that is sent is altered significantly through the use of protocols and other mechanisms.^{9/} This same information was

^{7/} The Joint Board concluded that the term "enhanced services," a term defined in the Commission's Rules, 47 C.F.R. § 64.702, and the term "information services," a term defined in the 1996 Act, 47 U.S.C. § 153(20), are substantially similar and can be analyzed for the purpose of this proceeding in an identical manner. *See Recommended Decision* at 790. We agree.

^{8/} *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-235 (rel. Aug. 29, 1996) ("*Local Competition Order*") at ¶ 995.

^{9/} It may be argued that an ISP transmits information, but only in the same fashion an office LAN server transmits documents to a desktop computer within its network. In addition, Internet users cannot, as a matter of technology, specify which points they want their E-mail message to travel and certainly cannot send Internet transmissions without change in the form or content of the message. In fact, "Dynamic Switching" requires Internet transmissions to travel past thousands of different nodes across the Internet. At
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available to the Joint Board, and enabled it to identify the distinction between information services and telecommunications services.^{10/} Based on this information, and the Commission's decision in the *Local Competition Order*, the Board appropriately concluded that information service providers are not "telecommunications carriers" and thus are not required to contribute to the universal service support mechanism.

In applying a definition of "telecommunications carrier," BSA urges the Commission to be careful, in this proceeding and others, to ensure that the definition does not sweep too broadly. On its face, some could argue that the definition covers a wide range of activity. The Joint Board carefully analyzed each element of the definition, however, and correctly concluded that Internet access providers and other on-line information companies are not covered by the definition. We urge the Commission to continue the course of carefully applying the definitions of telecommunications carrier

^{9/}(...continued)

every point, transmissions are checked for IP addresses, recorded for size, and in some instances (even when encrypted) copied. Moreover, the open Internet retrieves and delivers information in a way that significantly changes the form and content of Internet transmissions. Internet content, by definition, is in constant flux as it is processed by each of the various Internet protocols (i.e., IP, HTTP, and FTP). In any given transmission, dozens of changes to form and content occur as a result of Internet protocols not being able to translate or incorporate all characters outside and inside the data stream. To the extent that these changes occur, what Internet users download (or transmit) will likely be significantly dissimilar to its original form. Thus, because Internet transmissions do not transmit information between points specified by the user and the format and content of the information is likely to change dramatically across the network, Internet transmissions are not "telecommunications" and Internet service is not a "telecommunications service".

^{10/} See *Recommended Decision* at ¶ 782.

and information service in a manner that is consistent with the primary goal of the 1996 Act, to minimize the regulatory burden imposed on all companies.

B. BSA Endorses the Recommended Definition of "Core" Universal Service.

The challenge facing the Joint Board was to include not too much, and not too little, in the definition of universal service. The Joint Board had to balance the lure of technology, such as the approach advocated by the Alliance for Public Technology (which argued for a definition promoting maximum bandwidth to the home), with practical concerns about affordability, a view expressed by, *inter alia*, AARP and other consumer groups. We think the Joint Board succeeded in balancing these competing interests.

The goal of Congress in adopting Section 254 of the 1996 Act was to ensure that all Americans have universal *access* to advanced services but not to include such services in the definition of universal service.^{11/} The Joint Board fully endorsed this approach by resisting efforts to include specific advanced services (e.g., ISDN, end-to-end digital service, call waiting) within the definition of universal service, since these advanced services would have made the system too expensive for everyone involved -- consumers and carriers. However, the Joint Board's recommendation ensures that consumers will have the ability to access these services.^{12/} Of course, the introduction of

^{11/} See, e.g., H.R. REPT. NO. 204, 104th Cong., 1st Sess. 80 (1995) ("The [universal service] plan should also seek to promote *access* to advanced telecommunications services") (emphasis added).

^{12/} The Joint Board's recommendation on how directory assistance should be
(continued...)

local telephone service competition will hasten the availability and affordability of advanced services.

The Joint Board's definition of "core" universal service, which includes voice grade access to the public switched network and touch-tone service, should be adopted since it represents a reasonable package of services that will ensure Americans stay connected with the networks of the future.

C. BSA Supports Use of Forward-Looking Costs for Defining Level of Universal Subsidy.

The Joint Board made the right decision, as the Commission did in the *Local Competition Order*, to use forward-looking cost in determining the cost of providing universal service that should be supported by a subsidy payment. A forward-looking cost methodology focuses on the appropriate economic incentives that should be the foundation of a payment system. Use of a forward-looking cost methodology sends the right market signals to new entrants about the economic costs of providing service in a market. It also has the effect of signaling incumbent carriers that their existing cost structure, with its frequently inflated accounting costs, needs to be brought into line with the economic costs evident in a competitive pricing environment. The problem with a payment system that focuses on embedded costs, an approach advocated by many local exchange carriers, is that it gives no incentives for carriers to operate more efficiently. Therefore, BSA strongly agrees with the Joint Board that to encourage efficiency, support

^{12/}(...continued)

addressed illustrates this approach: "We are recommending support be provided for access to directory assistance, not the service itself." See *Recommended Decision* at ¶ 67 (emphasis in original).

payments should be based on "the costs that would be incurred by an efficient competitor entering that market." *Recommended Decision* at ¶ 269. Otherwise, LECs would be rewarded for past expenditures made in a monopoly, rate-of-return environment, and the cost of supporting universal service would almost inevitably increase.

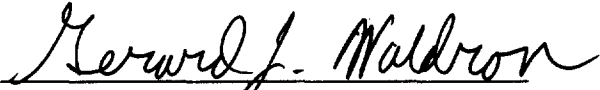
CONCLUSION

For the reasons stated above, BSA urges the Commission to adopt the Joint Board's recommendation on the definition of universal service and telecommunications carriers, and to adopt the recommendation on providing schools and libraries with connections to the Internet with the modifications suggested above.

Respectfully submitted,

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